

August 3, 2005

John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Dear Mr. Robertus:

We have reviewed the tentative orders for the Fallbrook Public Utilities District, Wastewater Treatment Plant No. 1 (tentative Order No. R9-2005-0137, NPDES Permit No. CA0108031) and the City of Oceanside, San Luis Rey and La Salina Wastewater Treatment Plants (tentative Order No. R9-2005-0136, NPDES Permit No. CA0107433). We believe that various changes are necessary to ensure that the permits properly regulate the permittees' sewage collection systems in accordance with Clean Water Act and NPDES requirements. Our primary areas of concern are the Board's treatment of collection system requirements and provisions VII.N. and VII.O. in the Compliance Determination sections of the draft permits.

Collection Systems:

In the Findings sections of the draft permits, the Regional Board properly defines the permitted facilities to include the permittees' sanitary sewage collection systems as well as the treatment plants and outfalls. In the Special Provisions sections of the draft permits, though, the collection systems are excluded from a number of important requirements. However, collection systems are part of the POTW and subject to Standard Federal NPDES provisions such as those requiring proper operation and maintenance (40 CFR 122.41(e)) and reporting of noncompliance (40 CFR 122.41(l)(6) and (7)). Consequently, paragraphs VI.C.2.b. and c. of the draft Fallbrook permit and paragraphs VI.C.2.c. and d. of the draft Oceanside permit (in which the collection systems are excluded from requirements to develop spill prevention and response plans and to report sanitary sewer overflows (SSOs)) are not consistent with NPDES requirements.

It appears that the exclusions were made to eliminate overlap with the Board's general non-NPDES Waste Discharge Requirement 96-04 for wastewater collection systems. Although there may be other ways for the Board to correct the deficiency in the draft permits, one clear resolution would be for the Board to incorporate the WDR 96-04 spill reporting and spill prevention and response plan requirements into the NPDES permits. Lastly, the fact sheets and findings sections of the permits should be changed to reflect the modifications requested above and clarify that the permitted facilities include the collection systems.

Compliance Determination:

In the Compliance Determination section of the draft permits, Paragraph VII.O. read in conjunction with Paragraph VII.N. suggests that only violations of the permits' Surface Water Discharge Prohibitions are Clean Water Act violations, i.e., that discharges to land do not violate the Clean Water Act. These provisions should be deleted for several reasons. First, the blanket assertion that discharges to land do not (or cannot) be violations of the Clean Water Act is incorrect. For example, discharges to land may result from noncompliance with permit provisions that require the permittee to properly operate and maintain the Publicly Owned Treatment Works (provisions that are required as part of the federal approval of California's program to administer the Clean Water Act under State law). Second, as a practical matter, given the Clean Water Act's admonition to provide for, encourage, and assist public participation in the enforcement of any standard or effluent limitation established by a State under the Clean Water Act, the justification of the purported exclusion in Paragraph VII.O. (to remove the permittees' potential liability from third party lawsuits) is not appropriate. Third, determinations about whether a discharge violates the Clean Water Act and/or a permit are appropriately made on a case by case basis. Further, under Clean Water Act section 309, the State cannot limit EPA's enforcement authority regarding NPDES permits. Again, please change the Fact Sheet to accord with the permit changes.

Finally, the undefined term "surface water" is used in several permit provisions. To be consistent with the Clean Water Act, the term "surface water" should be changed to "Waters of the United States."

Sincerely yours,

Douglas E. Eberhardt
Manager, CWA Standards and Permits Office